

## Part III - Administrative, Procedural, and Miscellaneous

### Classification of Certain Foreign Entities

#### Notice 2007-10

This notice announces that Treasury and the Internal Revenue Service (IRS) will amend § 301.7701-2(b)(8) of the Procedure and Administration Regulations to add the Bulgarian aktsionerno druzhestvo entity to the list of entities that are always treated as corporations under section 7701 of the Internal Revenue Code (Code).

#### BACKGROUND

The IRS and Treasury issued final regulations concerning the classification of business entities under section 7701 of the Code on December 18, 1996 (check-the-box regulations). See generally, TD 8697 (1997-1 C.B. 215; 61 FR 66584) and §§ 301.7701-1 through 3. Under the check-the-box regulations, a business entity generally can elect its classification for federal tax purposes. However, § 301.7701-2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for federal tax purposes (the per se corporation list).

On December 16, 2005, the IRS and Treasury published regulations (TD 9235, 2006-4 I.R.B. 338; 70 FR 74658) under section 7701 of the Code adding certain foreign business entities to the per se list of corporations. These regulations were in response to the adoption by the Council of the European Union of a Council Regulation

(2157/2001 2001 O.J. (L 294)) (the EU Regulation) that recognized a new business entity, the European public limited liability company (Societas Europaea or SE).

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE, and supplements those rules for specified issues and issues it does not otherwise address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). For further background see TD 9197 (2005-1 CB 985; 70 FR 19697) and Notice 2004-68 (2004-2 CB 706).

As of January 1, 2007, Bulgaria will become a member of the European Union. Accordingly, an SE will be eligible to have its registered office in Bulgaria and those SEs with a registered office in Bulgaria will, to a certain extent, be subject to the laws of the public limited liability company in Bulgaria. As a result, and consistent with TD 9235, it is appropriate for the IRS and Treasury to add the public limited liability company for Bulgaria to the per se list.

## DISCUSSION

The IRS and Treasury will issue temporary and proposed regulations that will modify § 301.7701-2 to include the Bulgarian aktsionerno druzhestvo on the per se corporation list. This entity has been identified as the public limited liability company in Bulgaria.

## EFFECTIVE DATE

The temporary and proposed regulations to be issued adding the Bulgarian aktsionerno druzhestvo to § 301.7701-2(b)(8) generally will apply to such entities formed on or after January 1, 2007. However, they shall also apply to an entity formed before such date upon a 50 percent or greater change of ownership subsequent to such date.

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